

Baxter

22 July 1992

CONFIDENTIAL
FOR OUTSIDE COUNSEL ONLY

Mr. Richard D. Murdock
President
CellPro, Incorporated
Suite 100
22322 - 20th Avenue S.E.
Bothell, Washington 98021

CERTIFIED MAIL

Dear Mr. Murdock:

Re: CD34 License

This is further to Baxter's letter to you dated April 15, 1992, outlining the proposal discussed during the meeting of our two companies of April 14, 1992. I have assumed the position of President, Immunotherapy Division of Baxter. I will be the point of contact, replacing Russel Hays, who has recently left the company.

We write because we were genuinely surprised and dismayed that your response to our discussions of April 14th and our letter of April 15th was to file a lawsuit. CellPro -- not Baxter -- initiated discussions over a year ago seeking a comprehensive business relationship between the companies on a going forward basis. CellPro requested that Baxter consider working with it on the development of CellPro's business and on joint product developments. CellPro repeatedly requested over many months that Baxter consider distributing its products in Europe. CellPro told Baxter that it needed an international company with Baxter's resources and contacts as a distribution partner. Indeed, as late as our meeting on April 14th, you advised that CellPro remained keenly interested in having Baxter as a "business partner," at least with respect to Europe.

In fact, CellPro has been seeking a "mutually beneficial business relationship" with Baxter since long before Baxter offered CellPro a patent license. To this end, CellPro requested and the parties entered into a comprehensive mutual confidentiality agreement. This agreement, dated as of November 5, 1991, recites that "CellPro and Baxter are interested in exploring a possible joint business relationship." It calls for the exchange of confidential and proprietary information between the companies to permit discussions concerning a possible joint venture or distribution arrangement. Such an agreement was to permit the companies to explore a variety of conceivable business

DEPOSITION
EXHIBIT

5-11-95

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Plaintiffs'
Trial Exhibit
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94-105-RRM

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relationships, including Baxter's possible equity participation in CellPro. Baxter fully expected that the discussions with CellPro would proceed in the spirit of cooperation, candor and informed negotiation.

You told us at the April 14th meeting that CellPro remained interested in having Baxter exclusively distribute its products in Europe. We inquired whether CellPro would be willing to allow Baxter to distribute CellPro's products in Japan and North America. We explained that Baxter is a global company and would find it difficult and inefficient to distribute products in limited geographical areas. We sought -- but certainly did not insist upon -- a nonexclusive right to distribute CellPro products in North America, recognizing that CellPro would continue to be free to appoint other distributors. We urged that a nonexclusive grant would still permit CellPro to exploit fully its potential North American market. All of this was, in any event, negotiable.

While you believed that your board of directors would be unwilling to provide any rights in North America, and while you did not believe that Baxter would be a beneficial partner in Japan, you requested that we provide a written request outlining our desired "proposal" that you could present to your board. You indicated that CellPro would continue to give consideration to those issues and was not rejecting them out of hand. Baxter indicated that it remained willing to negotiate any issue, including various distribution rights and Baxter's possible equity participation in CellPro. We agreed to prepare a letter for you to use in visiting these issues with your board.

As you know, our prior letter of January 13, 1992, to CellPro and a number of other companies proposed a license for the CD34 patents. We believed (and continue to believe) that the financial terms of the proposed license are more than reasonable in view of Baxter's underlying payment obligations to Becton, Dickinson. This license concerns only Baxter's therapeutic rights, including research directed to therapeutic applications, under its license from Becton, Dickinson. Let there be no misunderstanding. We advised that a freestanding CD34 license was no longer part of our negotiations because we assumed CellPro was not interested in Baxter's license offer. CellPro's counter-proposal eliminated an upfront payment, replacing it with an advance against future royalties, and contained terms which significantly reduced the rate of royalty to be paid to Baxter. In light of Baxter's royalty obligations to Becton, Dickinson, the terms of your counter-proposal rendered any license to CellPro unprofitable to Baxter.

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We did not refuse to license the CD34 patents. We continued to believe that CellPro's response indicated it lacked interest in negotiating a reasonable royalty bearing license. Since CellPro was either unable or unwilling to enter into license, we offered to provide CellPro with a free "pass through" license to make, use and sell its products in the United States under our license to the CD34 technology to aid Baxter's distribution proposal for CellPro's products in Japan, North America and Europe. We believed from our prior discussions with CellPro that the parties were working toward a venture relationship at least in Europe.

No infringement lawsuit or claim against our potential partner and supplier was contemplated, threatened or even mentioned. We believed that we were negotiating a comprehensive business venture mutually beneficial to both our companies. At least we so thought until we learned through the press that CellPro had initiated legal action against Baxter and Becton, Dickinson.

It is our impression that CellPro never intended to consider the proposal we discussed in our April 14th meeting. We can only conclude from the timing of the lawsuit that your request to have us provide you with a written proposal for your board was not to further our joint interests. Sad to say, we had not completed negotiations for our venture, we had not fully considered with you issues relating to broader venture participation between our two companies and we had not taken any positions that were nonnegotiable. You at no time rejected our requested distribution rights. You indicated what was desirable and what was likely to be undesirable from CellPro's perspective. We thought our proposal to your board would precede meaningful compromise and negotiation, not trigger a lawsuit.

We assume by CellPro's actions in bringing a lawsuit that our negotiations concerning a venture with CellPro and/or Baxter's distribution of CellPro's products, as initiated and encouraged by CellPro, are at an end. We accept that. We therefore reconfirm that our licensing proposal outlined in our letter of January 13, 1992 (consisting of a \$750,000 upfront payment and a running royalty of 16 percent applied to the net sales price of the antibody or to a defined portion of the net sales price of a product containing the antibody) remains available.

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We regret the actions taken by CellPro. We believe that both companies were working toward a mutually beneficial relationship and that the legal action instituted by CellPro has not served either company's interests. If CellPro has any interest in reopening negotiations on any of our prior discussions, please let us know.

Sincerely yours,

John Osth /js
John Osth
President,
Immunotherapy Division
Baxter Healthcare Corporation

Copies: T. Anderson
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